

Appl. No. 10/757,813
Atty. Docket No. 7294C
Amdt. dated March 26, 2007
Reply to Office Action of December 26, 2006
Customer No. 27752

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REMARKS

Claim Status

Claims 1-7, 10-12 and 15-17 are pending in the present application. No additional claims fee is believed to be due.

Objections to the Specification

The Office Action has objected to the amended specification submitted October 12, 2006, for introducing new matter into the specification. Applicants respectfully submit that the amended specification does not introduce new matter into the specification. The Office Action states that there is no support in the specification to clarify that the nominal size of the macro particles is in a diameter dimension. Applicants respectfully disagree. Page 27, lines 11-13 explain that the term "macroporous" refers to materials having pores too large to effect capillary transport of fluid, generally having pores greater than about 0.5mm in diameter. Thus, it is clear that measurements relative to the storage element materials can be made in the diameter dimension. Further, page 27, lines 27-34 explain that particles having specific nominal sizes are those which are generally retained on the surface of specific U.S. Standard sieve screens. The sieve designation is directly related to the size of the sieve opening. Thus, the ability of a particle to pass through or be retained by a sieve screen is related to the diameter of the particle.

Applicants submit that no new matter was added to the specification through the amendment of October 16, 2006. As such, Applicants respectfully request that the objection to the specification be withdrawn.

The Rejection under 35 U.S.C. §112, first paragraph

Claims 5 and 15 have been rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. As discussed above, the specification indicates that measurements relative to the storage element materials can be made in the diameter dimension. Further, the specification describes that particles having specific nominal sizes are those which are generally retained on the surface of specific

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U.S. Standard sieve screens. As the ability of a particle to pass through or be retained by a sieve screen is related to the diameter of the particle, Applicants submit that the subject matter is described in the specification in such a way as to reasonably convey to one skilled in the relevant art that diameter is a dimension measurement of the particles claimed in the present invention. Therefore, Applicants respectfully request that the rejection be withdrawn.

The Rejection under 35 U.S.C. 103(a) over Thompson et al '208, Thompson '135, Sneyd et al, Moore et al, and Lash.

Claims 1-7, 10-12, and 15-17 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al., U.S. Patent No. 5,281,208 (hereinafter "Thompson '208"); Thompson, U.S. Patent No. 3,929,135 (hereinafter "Thompson '135"); Sneyd et al., European Patent No. 0215417 (hereinafter "Sneyd"); Moore et al., U.S. Patent No. 4,898,642 (hereinafter "Moore"); Lash et al., U.S. Patent No. 4,935,022 (hereinafter "Lash"). Applicants respectfully traverse this rejection, as the references alone, or in combination, do not establish a *prima facie* case of obviousness. Specifically, they do not teach or suggest all of Applicants' claim limitations, as required under MPEP 2143.03.

Thompson '208, Thompson '135, Sneyd, Moore, or Lash do not teach or suggest a disposable absorbent article comprising a topsheet; a backsheet joined with the topsheet; an absorbent core disposed between at least a portion of the topsheet and the backsheet; an acceptance element disposed adjacent to a body surface of the absorbent core, wherein the acceptance element comprises one or more apertures each having an effective aperture size of between about 0.2 square mm to about 25 square mm; and a fecal storage element disposed between at least a portion of the acceptance element and the absorbent core, wherein the fecal storage element is separate from the absorbent core, the fecal storage element having a compressive resistance of at least about 70%. Therefore, a *prima facie* case of obviousness has not been established.

Claim 1 requires that the fecal storage element has a compressive resistance of at least about 70%. Thompson '208 does not teach or suggest a fecal storage element having a compressive resistance of at least about 70%. The Office Action states that

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Thompson '208 teaches a layer having resilience and a ratio of wet to dry caliper of at least 80%, and Thompson '208 does not teach such layers having a compression resistance of at least about 70%. The Office Action further states that it would have been obvious to employ a compressive resistance of at least about 70% on the Thompson '208 device. Applicants respectfully disagree. Wet-to-dry caliper ratio and compressive resistance are distinct properties, and Thompson '208 is silent with respect to compression resistance as described in the present invention.

Wet/dry caliper ratio is the thickness of a wetted material divided by the thickness of the same material when dry (i.e., it is a measure of the impact of wetness/saturation on the thickness of a material). Compression resistance is the thickness of a material under some applied pressure divided by the thickness of the same material prior to experiencing an applied pressure (i.e., it is a measure of the impact of applied pressure on the thickness of a material). (See page 29, lines 23 of the instant specification). While the two are similar in being measures of material thickness pre- and post- application of a stimulus, they are very different because the applied stimulus is different.

Furthermore, wet/dry caliper ratio and compressive resistance are not correlated. For example, a standard kitchen sponge and an airfelt batt may have similar resistance to compression. However, the sponge will actually grow in thickness when wet while the airfelt batt will collapse when wet. Thus, the factors that determine wet/dry caliper ratio are separate and distinct from those that result in compressive resistance.

In addition, Claim 1 requires that the fecal storage element be disposed between at least a portion of the acceptance element and the absorbent core, wherein the fecal storage element is separate from the absorbent core. Thompson '208 does not teach or suggest a fecal storage element as claimed in the present application. In contrast, Thompson '208 teaches fibers having intra-fiber capillary channels that are used in conjunction with topsheet materials. (See Abstract). Thompson '208 further teaches a fluid permeable nonfibrous formed-film topsheet, a layer comprising multiple fibers having external intrafiber capillary channels underlying the back face of said topsheet, and a fluid impermeable backsheet. (See Column 5, lines 48-57 and Column 6, lines 10-11).

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However, Thompson '208 does not teach or suggest a fecal storage element which is separate from the absorbent core as required by Claim 1.

Thompson '208 is directed to absorbing various body fluids, especially menses. (See Column 1, lines 11-13; Column 13, lines 43-45; Column 31, lines 40-42). Claim 1 is directed to the storage of fecal matter. Page 27, lines 4-20 of the present specification discuss suitable materials for use as the storage element. In order to store fecal matter, the storage element must have a structure that allows for the absorption and storage of fecal matter. Typically, the amount of fecal matter being stored is larger than the amount of menses during a similar event. Thus, not all fibrous layers have the ability to store fecal matter, as required in Applicants' Claim 1. The capillary fibers taught in Thompson '208 are used to transport menses fluid along the length of the fiber, and would not necessarily absorb and store fecal matter as claimed in the present invention.

Further, Thompson '135, Sneyd, Moore, or Lash do not alleviate the shortcomings of Thompson '208, as none of the references teach or suggest a disposable absorbent article comprising a fecal storage element disposed between at least a portion of the acceptance element and the absorbent core, wherein the fecal storage element is separate from the absorbent core, the fecal storage element having a compressive resistance of at least about 70%, as required by Applicants' Claim 1. Because the suggested combination of references fails to teach or suggest all of the claim elements of Claim 1, Applicants assert that Claim 1 is nonobvious over the suggested combination of references. Additionally, because Claims 2-7 depend from Claim 1, Applicants assert that they too are nonobvious over the suggested combination of references for at least all of the reasons provided for Claim 1.

Claim 10 includes the claim elements presented above with respect to Claim 1, (i.e., a fecal storage element disposed between at least a portion of the acceptance element and the absorbent core, wherein the fecal storage element is separate from the absorbent core, the fecal storage element having a compressive resistance of at least about 70%). As such, Applicants assert that Claim 10 is nonobvious over the suggested references for all of the reasons presented with regard to Claim 1. Additionally, because Claims 11-12

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and 15-17 depend from Claim 10, Applicants assert that Claims 11-12 and 15-17 are nonobvious over the suggested references, as well.

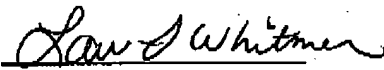
To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Thompson '208 alone, or in combination with Thompson '135, Sneyd, Moore, or Lash, does not teach or suggest all of Applicants' claim limitations. Therefore, Applicants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

CONCLUSION

In view of the above, Applicants respectfully submit that each of the issues raised by the Office Action have been addressed. Reconsideration and allowance of the pending claims is respectfully requested.

Respectfully submitted,

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